

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Qwest Petition for Forbearance Under 47 U.S.C.)	
§160(c) from Title II and <i>Computer Inquiry</i>)	
Rules with Respect To Broadband Services)	
)	
Petition of AT&T Inc. for Forbearance Under)	
47 U.S.C. § 160(c) from Title II And <i>Computer</i>)	WC Docket No. 06-125
<i>Inquiry</i> with Respect To its Broadband Services)	
)	
Petition of BellSouth Corporation for Forbearance)	
Under Section 47 U.S.C. §160(c) from Title II and)	
<i>Computer Inquiry</i> Rules with Respect to its)	
Broadband Services)	
)	
In the Matter of Petition of the Embarq Local)	
Operating Companies For Forbearance Under)	
47 U.S.C. §160(c) From Application of <i>Computer</i>)	WC Docket No. 06-147
<i>Inquiry</i> And certain Title II Common-Carrier)	
Requirements)	

COMMENTS IN SUPPORT OF PETITIONS

The Embarq Local Operating Companies,¹ hereby respectfully comment on the above-captioned Petitions in response to the Public Notices (“PN”) released July 20, 2006 (DA 06-1464), July 21, 2006 (DA06-1490) and July 28, 2006 (DA 06-1545).²

¹ On May 17, 2006, Sprint Nextel Corporation transferred the Sprint Local Operating Companies that were Sprint’s incumbent local exchange carrier operations by means of a stock dividend to shareholders and the creation of a new holding company, Embarq Corporation. The former Sprint Local Telephone Operating Companies are now the Embarq Local Operating Companies, are subsidiaries of Embarq Corporation, and are independent of Sprint Nextel Corporation.

² The July 20, 2006 Public Notice (DA 06-1464) established a comment date of August 3, 2006 and a reply date of August 28, 2006 for the Qwest and AT&T Petitions. The July 21, 2006 Public Notice (DA 06-1490) combined the BellSouth Petition with the other two RBOC petitions in WC Docket No. 06-125 for comment and reply purposes. On July 28, 2006, the Commission

Embarq supports the three above-referenced RBOC Petitions, but believes they are too limited in scope. Qwest's Petition seeks relief solely for Qwest. BellSouth's Petition states that relief should be granted to similarly situated carriers, but apparently BellSouth believes that only fellow RBOCs are, at least for purposes of broadband services, similarly situated to BellSouth.³ AT&T's Petition specifically states that relief should be granted to AT&T and the other RBOCs.⁴

To the contrary, as Embarq argues in its above-referenced Petition, relief should be granted to all similarly situated independent ILECs that provide broadband services. The legal and factual rationale that lead to the grant of the Verizon Petition for Forbearance from regulation of broadband services⁵ and that must lead to the grant of the other RBOC and Embarq Petitions, apply equally to other ILECs.

First, BellSouth and AT&T both point out that the legal and factual analysis that lead the Commission to forbear from regulating broadband wireline access to the Internet in the *Wireline*

issued an order changing the comment date to August 17, 2006 and reply date to August 31, 2006 on all three RBOC petitions. Also on July 28, 2006 the Commission released Public Notice DA 06-1545 establishing Docket No. WC 06-147 for Embarq's factually and legally identical Petition for Forbearance and stated that parties wishing to comment on the Embarq petition could combine such comments with comments on the three RBOC petitions.

³ BellSouth Petition for Forbearance at footnote 5. ("Because the conditions that justify Verizon's Forbearance Petition apply equally to all BOCs, and because the Commission is authorized to grant forbearance to a "class of telecommunications providers," the relief awarded by operation of law should equally apply to all BOCs.")

⁴ AT&T Petition for Forbearance at p. 2. ("Accordingly, forbearance from Title II and *Computer Inquiry* regulation of these services is warranted for *all* BOCs on a nationwide basis.")

⁵ *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, NEWS, *Verizon Telephone Companies Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is granted by Operation of Law*, March 20, 2006, petitions for review pending, COMPTel, 06-1113 (DC Cir, filed March 29, 2006) & Sprint Nextel, 06-1111 (DC Cir., filed March 29, 2006).

*Broadband Order*⁶ applies equally, if not more so, to other broadband services.⁷ Embarras agrees.

However, AT&T suggests that the Commission's analysis in that proceeding was BOC-oriented:

Thus, it found there is no public interest justification to compel carriers to make "cookie cutter" Title II common carriage offerings that deny them the flexibility to meet individual customers' specialized requirements. *Wireline Broadband Order* ¶¶ 74-76, 87-88. The Commission further found that the current competitive environment eliminates any reason to treat **the BOCs** differently from the many other competing broadband Internet access providers. *Id.* §§ 45, 79, 97.⁸

However, the relief granted in the *Wireline Broadband Order* applied to all ILECs that were providing broadband wireline Internet access. The relief was not limited just to the RBOCs or any other category of ILEC. Indeed, in paragraph 45 of the *Wireline Broadband Order*, cited to by AT&T in the above quote, the Commission made it clear that its intent was to be all inclusive, not exclusive, and that the analysis should apply generally to broadband services, not just Internet access.

As part of this policy, we believe that we should regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions.⁹

Second, Verizon, which has already been granted the forbearance requested in the four Petitions referenced above, and AT&T, which is one of the petitioners in the instant proceeding, compete in the broadband marketplace on a nationwide basis. Verizon acquired the former MCI and competes nationally for broadband service through MCI Business. AT&T competes

⁶ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Order*").

⁷ See, BellSouth Petition for Forbearance at p. 4. ("Moreover, the same findings and conclusions that led the Commission to grant regulatory relief in the *Broadband Internet Access Order* apply with equal measure to broadband services in general.") and AT&T Petition for Forbearance at p. 4. ("All of these findings [from the *Wireline Broadband Order*] apply with equal or greater force to other broadband services.")

⁸ AT&T Petition for Forbearance at p. 4. (**Emphasis supplied.**)

⁹ *Wireline Broadband Order*, ¶ 45.

nationally through the former AT&T which was merged into SBC which subsequently changed its name to AT&T. Both companies compete in the Embarq local territories for broadband services. Intuitively, Embarq believes that these very large national players must also compete with the other independent ILECs. As Qwest, which also competes with Verizon (and likely AT&T), argued in its Petition:

Qwest and Verizon compete head to head, and are identically situated, but for their size and the regulatory playing field, which is tilted in Verizon's favor. Because there is no difference between Qwest and Verizon, for purposes of this relief, it would be unfairly discriminatory to allow the regulatory disparity to continue. Given the Commission's decisions not to regulate Verizon, it must also refrain from regulating Qwest.¹⁰

Qwest's argument applies equally to the other RBOCs and the independent ILECs such as Embarq. Verizon, the nationwide IXCs such as Sprint, competitive LECs such as XO and Level 3, large cable companies, IP providers, and others all compete in the nationwide broadband market on an unregulated or largely unregulated basis. There is no justification in law or fact to continue regulating the ILEC provision of broadband service and in fact to do so is discriminatory.

Third, as BellSouth points out, the forbearance relief granted Verizon was "based on nationwide market conditions"¹¹ because "broadband competition is national in scope."¹² This is even more reason why the relief sought should not be limited to the RBOCs, but should be granted to all ILECs providing broadband services.

As Embarq demonstrated in its above-referenced Petition, the Commission has often recognized that the independent ILECs are less likely and able than the RBOCs to engage in anti-

¹⁰ Qwest Petition for Forbearance at p. 6.

¹¹ BellSouth Petition for Forbearance at p. 3.


¹² *Id.* at p. 5.

competitive behavior in nationwide markets.¹³ The rationale for regulating Embarq and the other independents with a lighter hand than the RBOCs in the *Computer II Final Decision* and the *Computer III Phase II Order* was largely because the more geographically dispersed and less densely populated territories of the independent ILECs provided them with far less opportunity to dominate or engage in anticompetitive practices in the nationwide enhanced services marketplace. This rationale is equally true with the nationwide scope of the broadband market. This is especially true given that Verizon, a gigantic ILEC with a national network and broadband offerings, has been granted forbearance.

Accordingly, Embarq respectfully requests that the Commission grant its and the above-reference RBOC Petitions. In doing so, the Commission should not limit relief to the four petitioning parties. Rather, the Commission should grant regulatory forbearance to all ILECs that provide the broadband services in question.

Respectfully submitted,

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¹³ See, e.g., *In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)* 77 F.C.C. 384 (1980) (*Computer II Final Decision*) at 217 and *In the Matters of Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry) and Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorizations Thereof Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 2 FCC Rcd 3072 (1987) ("*Computer III Phase II Order*") at ¶¶ 8, 203.

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August 2006 served the following parties with a copy of the foregoing Comments in Support of Petitions in WC Docket Nos. 06-125 and 06-147 by the method noted.

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